

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

GERALD E. VALLEJOS,

Plaintiff,

VS.

LOVELACE MEDICAL CENTER,
CARMEN SMITH-SALAZAR,
JOSEPHINE GOROSPE, SUZETTE
HARRIS, JENNIFER HOLLER, SARAH
ATKINSON AND KEVIN SINCLAIR,

Defendant.

CASE NO.

JOINT NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1446, Defendants Lovelace Medical Center (“Lovelace”), Carmen Smith-Salazar, Josephine Gorospe, Suzette Harris, Jennifer Holler, Sarah Atkinson and Kevin Sinclair (collectively “Defendants”) hereby invoke this Court’s jurisdiction under the provisions of 28 U.S.C. §§ 1331 and 1441(b) and remove this civil action from the Second Judicial District Court, County of Bernalillo, State of New Mexico, to the United States District Court for the District of New Mexico. In support of removal, Defendants state as follows:

1. Plaintiff Gerald E. Vallejos filed an action against Defendants on February 4, 2011, in the Second Judicial District Court, County of Bernalillo, State of New Mexico. This action is entitled *Gerald E. Vallejos, vs. Lovelace Medical Center, Carmen Smith-Salazar, Josephine Gorospe, Suzette Harris, Jennifer Holler, Sarah Atkinson and Kevin Sinclair*, and bears the Case Number CV-2011-01355 (Ex. A).

2. On February 8, 2011, Defendant Lovelace accepted service of the Complaint in this action. As required by 28 U.S.C. § 1446(b), this Notice of Removal is being filed within 30 days of service on Defendant Lovelace of the initial pleading setting forth the claim for relief.

3. No proceedings have been had in the state action. No Defendant has answered or served any responsive pleadings to the Complaint, or made any appearance or argument in the state court.

4. Pursuant to 28 U.S.C. § 1441, this civil action may be removed to this Court where Plaintiff's claims present a federal question.

5. For the reasons described below, this Court has jurisdiction over the state court action pursuant to 28 U.S.C. §§ 1331 and 1441 because Plaintiff's Complaint alleges a cause of action under the laws of the United States, specifically Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. Plaintiff alleges in his Complaint that "Defendants retaliated against me for engaging in protected activities as defined under Title VII of the Civil Rights Act of 1964 (Title VII) and the New Mexico Human Rights Act of 1969, and for filing employment discrimination charges . . . " (Ex. A).

6. This Court also has supplemental jurisdiction over Plaintiff's non-removable, state law claims because all of Plaintiff's claims are transactionally related in that they arise from the same nucleus of operative facts. *See* 28 U.S.C. § 1367. Alternatively, this Court has jurisdiction over all non-removable claims pursuant to 28 U.S.C. § 1441(c).

7. Under 28 U.S.C. § 1441(a), venue of the removed action is proper in this Court as the district and division embracing the place where the state action is pending.

8. Defendants submit this Notice without waiving any defenses to the claims asserted by Plaintiff or conceding that Plaintiff has pleaded any claims upon which relief can be granted. Individual Defendants Carmen Smith-Salazar, Josephine Gorospe, Suzette Harris, Jennifer Holler, Sarah Atkinson and Kevin Sinclair submit this Notice without waiving any defenses regarding Plaintiff's failure to properly serve them with the Complaint and Summons here at issue.

9. All Defendants are represented by the counsel of record identified below, and all Defendants consent to and join in the removal of the state action to this Court.

10. True and correct copies of all records and proceedings from the state court action are filed with this Court contemporaneously herewith. (Ex. C).

11. Defendants will promptly give Plaintiff written notice of the filing of this Joint Notice of Removal as required by 28 U.S.C. § 1446(d).

12. A Notice of Filing Joint Notice of Removal will be promptly filed with the Clerk of the Second Judicial District Court, County of Bernalillo, State of New Mexico, as also required by 28 U.S.C. § 1446(d). A true and correct copy of the Notice of Filing Notice of Removal is attached hereto as Exhibit B.

Accordingly, Defendants remove Civil Action Case No. CV 2011-01355 from the Second Judicial District Court, County of Bernalillo, State of New Mexico, to this Court.

Respectfully submitted this 8th day of March, 2011.

/s/ R. Nelson Franse, Esq.

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Kevin Sinclair

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Defendant.



CASE NO.

CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the forgoing **Joint Notice of Removal** with the Clerk of Court using the CM/ECF system, and served same via certified mail to:

Mr. Gerald Vallejos
6304 Buenos Aires NW
Albuquerque, New Mexico 87120

This 8th day of March, 2011.

Respectfully submitted,

/s/ R. Nelson Franse, Esq.

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